

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Reserved on: 05.11.2015**

**Decided on: 18.03.2016**

+ W.P.(C) 6289/2013

EX. CONST. SANJAY KUMAR DUBEY ..... Petitioner

Through: Mrs.Rekha Palli, Sr.Adv. with  
Mrs.Punam Singh, Ms.Ankita  
Patnaik, Ms.Shruti Munjal and  
Ms.Garima Sachdeva, Advocates

versus

UNION OF INDIA & ORS. .... Respondents

Through: Mr.Rajesh Gogna, CGSC with  
Ms.Bhavna Bajaj, Advocate for R-1  
to R-5.

AND

+ W.P.(C) 9219/2014

RAJESH ..... Petitioner

Through: Mr.Subhasish Mohanty, Advocate

versus

CENTRAL INDUSTRIAL SECURITY FORCE & ORS.

.....Respondents

Through: Mr.Vikas Mahajan, CGSC with  
Mr.Rohan Gupta, Advocate

**CORAM:**  
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**  
**HON'BLE MS. JUSTICE DEEPA SHARMA**

**MS. JUSTICE DEEPA SHARMA (JUDGMENT)**

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1. This common judgment disposes of two writ petitions as they arise from the same incident which occurred on 04.10.2009, at about 2000 hrs at SHA of 1-D at IGI Airport. Both Petitioners are aggrieved by their punitive termination (removal in W.P. (C) No.6289/2013 and dismissal in W.P. (C) No. 9219/201) after completion of disciplinary proceedings, by their employer, the Central Industrial Security Force (CISF).

2. On 04.10.2009 Sanjay Dubey (Petitioner in W.P. (C) No.6289/2013; hereafter "Sanjay") was on duty from 0700 hours to 2000 hours at SHA of 1-D at IGI Airport. Rajesh (Petitioner in W.P. (C) 9219/2014; hereafter "Rajesh") was also on duty from 2000 hrs (04.10.2009) to 0700 hrs. on 05.10.2009 at SHA 1-D Department. At about 8.00 p.m., there was a confrontation between the two petitioners due to some personal domestic disputes which was followed by a scuffle in which Sanjay pushed Rajesh; the latter retaliated by punching Sanjay twice on the face. Constable S.C. Yadav intervened, caught hold of Sanjay and moved him towards the table of SHA 1/C. At that time, Sanjay took out his service revolver; he was, however, restrained by Constable S.C. Yadav. The pistol was taken by S.I. D. Mohanty from his hand. Assistant Commandant (AC) J.P. Goswami also witnessed this incident.

3. The CISF, taking serious note of the incident which, in its view had tarnished the image of the Force and brought disrepute to the security

system of IGI Airport as well as caused panic among the passengers and other workers at the Airport, dismissed both of them by order dated 05.10.2009 without holding any enquiry. The petitioners approached this Court by way of Writ Petition Nos.4754/2011 (Sanjay Dubey) and W.P.(C) No.5130/2012 (Rajesh). Those writ petitions were disposed of by this Court by orders dated 18.07.2011 and 23.08.2012 on the basis of the statements of the respondent; the petitioners were directed to be reinstated, with liberty to respondent to conduct a departmental enquiry against both of them. Thereafter, separate enquiries against both of them were proposed and separate charge-sheets were issued.

4. During the enquiries, statements of witnesses were recorded. The petitioners were given due opportunities to cross-examine all the witnesses which were duly availed by them. The Enquiry Officers also recorded the defense statement of the petitioners. The Enquiry Officers, on the basis of the materials and evidence before them found the petitioners guilty of misconduct. After hearing the petitioners, the Disciplinary Authority dismissed Rajesh by order dated 26.06.2013, and removed Sanjay Dubey from service by order dated 21.06.2012. After exhausting the statutory remedies, the present writ petitions were filed by them.

**W.P(C) No.6289/2013**

5. The contention of Sanjay is that the enquiry was just an eye-wash and the copies of the relevant documents and of CCTV footage were not supplied to him. That the findings of the Enquiry Officer are based on conjectures and surmises and is perverse. It is further contended that there is no substantive evidence on record to prove the charges against him. He

further argues that the evidence on record, clearly establish the fact that it was he who had been assaulted by Rajesh. The plea taken by Sanjay is that though he took out his pistol, he neither cocked it nor used it. He intended to hand it over to senior officer in order to avoid any untoward incident, as Rajesh at that time was very aggressive and he had also lost his balance when he was punched on his face by Rajesh.

6. It is argued by learned senior counsel, Mrs. Rekha Palli that the testimony of Constable Subhash Chand Yadav (PW-6) clearly showed that when SI D Mohanty asked Sanjay to hand over the pistol, he immediately did so and the witness (PW-3) also corroborated this version. The pistol was secured by SI Kaushal Kumar (PW-4) who took it from PW-3 and then handed it over to SI Master Anand. It was subsequently deposited at Unit Line, Bijwasan under orders of DC Sh. N.K.Yadav. PW-4 had clearly stated in his cross examination that *“the pistol was not cocked”*. It is further argued that PW-1 Inspector Manmohan Jakhmola made a false statement that he saw Sanjay cocking the pistol after taking it out from the holster. He was far away and could not have seen him taking out pistol and cocking it, he was simply imagining a fact. Also, his version that *“the cocking can be seen from the CCTV footage”* is also wrong since the CCTV footage does not show that the pistol was cocked by him.

**W.P.(C) 9219/2014**

7. Rajesh argues that there is no evidence on record to prove the misconduct alleged against him. It is contended that none of the witnesses deposed against him. There is no evidence on record proving that Sanjay had made any complaint against him relating to any domestic problem. The

CCTV footage is a doctored document and has been created to implicate him falsely in this case. There is no medical record to prove that Sanjay suffered any injury. It is contended that no such incident had taken place. There is no written complaint ever made to airline authorities/GMR or airport authority. The opinion of the enquiry officer is thus based on conjectures and surmises. This court therefore has the authority to review the order of Disciplinary Authority which is based on no evidence. It is further urged that even the penalty imposed is also highly disproportionate in the given facts and circumstances of the case.

8. Learned counsel for CISF submitted that in both the enquiry proceedings, the witnesses had duly proved that Rajesh while on duty from 2000 hrs ( 04.10.2009) to 0700 hrs. (05.10.2009) (PW3) at SHA 1D, i.e. near X ray machine no 11 for baggage stamping duty confronted Sanjay Dubey (who was positioned on duty), abused him, punched him twice on his face and they also had a scuffle. Sanjay took out his pistol, raised his pistol holding arm towards the sky. Thereupon S.C. Yadav caught hold of his arm and snatched the pistol from him. It is submitted that the witnesses SI D. Mohanty and S.C. Yadav, in their depositions proved these facts. The entire incident was also caught by CCTV cameras and the CCTV footage was proved during the inquiry proceedings, which corroborates testimonies of the witnesses.

9. It is further argued by learned counsel for the respondent that both the writ petitioners had committed grave misconduct at a public place, and a secured area, where the members of the public persons are present all the time and their acts had brought disrepute to the Department. Their duty as a Security Force personnel deployed there was to ensure safety of the public



and that the petitioners caused fear and panic among the people present at that time. The image and reputation of the Force was badly tarnished by the action of the petitioners, who had to provide effective security of IGI Airport. Since the matter was internal, concerning employees of the CISF, the latter did not report the matter to other authorities. It is further argued by learned counsel that Rajesh's plea that no such incident occurred and he had been falsely implicated is meritless since the witnesses examined during the enquiry have proved the incident. S.C. Yadav had clearly deposed that Rajesh had hit Sanjay twice.

10. It is further argued that Rajesh had not produced any evidence in the enquiry proceedings to show that the allegations were false, or witnesses deposed falsely. On the other hand, the tenor of his cross-examination clearly showed that he was merely disputing the manner in which the incident had occurred and at no stage disputed the incident itself. The facts which triggered the incident had also been narrated by AC J.P. Goswami who in his cross-examination stated that Sanjay informed him of the domestic problem he and his family was facing from Rajesh. He had also deposed about asking Sanjay to file a written complaint, but before this could happen the incident had taken place. The AC J.P. Goswami, immediately after the incident, informed headquarters and also sent a special report to Inspector General; these prove the occurrence of incident. It is further urged by learned counsel for the respondent that the CCTV footage which had recorded the entire incident also discredit Rajesh Kumar's pleas).

11. It is further argued that in matters where there is sufficient evidence for the Disciplinary Authority to return a finding of proof of misconduct, this court lacks jurisdiction in judicial review. Reliance is placed on the

judgment of Supreme Court in *B.C. Chaturvedi vs. Union of India* AIR 1996 SC 484 (para -12) and on the judgment in the case of High Court of Judicature at *Bombay vs. Uday Singh through its Registrar* AIR 1997 SCC 2286.

12. It is further contended that the facts and circumstance of this case pointed to a grave misconduct by the petitioners in a highly secured area, which could undermine public confidence and cause panic to the public. This was serious enough to warrant the penalty of removal in case of Sanjay Dubey and dismissal in case of Rajesh Kumar and it cannot be said that the penalty imposed upon them was disproportionate or is shocking the conscience and, it needs no interference. While imposing punishment all the facts and circumstances relevant for the purpose were considered.

#### *Findings*

13. It is a settled proposition of law that the Courts under Article 226 have limited jurisdiction of judicial review. This Court, cannot, under Art. 226 sit as an Appellate Court over the findings of the enquiry officers based on sufficient material on record to prove the guilt of the petitioners. It is not the decision, but the decision making process which is subject matter of judicial review. The limited jurisdiction this Court enjoys has been spelt out in *High Court of Judicature at Bombay through its Registrar v. Udaysingh s/o Ganpatrao Naik Nimbalkar & Ors.*, AIR 1997 SC 2286; *Government of Andhra Pradesh & Ors. v. Mohd. Nasrullah Khan*, AIR 2006 SC 1214; and *Union of India & Ors. v. Manab Kumar Guha*, (2011) 11 SCC 535. In the earlier decision of *State of Andhra Pradesh vs. Sree Rama Rao* [1964 ] 3 SCR 25, the Supreme Court held as under:-

*“8.....Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for writ under Art.226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based the adequacy or reliability of that evidence is not matter which can be permitted to be canvassed before the High Court in a proceeding for writ under Art. 226 of the Constitution.”*

14. The main contention of Sanjay (Petitioner in W.P.C.6289 /2013) is that there is no substantive evidence to prove that he took out the pistol and cocked it. To prove this CISF relied on the testimonies of Constable S.C.Yadav (PW6), SI D. Mohanty(PW3) and Sub-Inspector Kaushal Kumar (PW4) and the CCTV footage. Constable S.C. Yadav (PW6) has clearly stated that he saw the delinquent Rajesh giving two fist blows to Sanjay and that he immediately went towards them, separated them and took Sanjay to the table of SHA I/C. At that time, Sanjay turned towards him and was holding a pistol in his hand. He caught hold of the Sanjay's pistol wielding



hand and SI D. Mohanty (PW3) took away the firearm. Mohanty (PW3) had deposed that he saw Constable S.C. Yadav (PW6) holding Sanjay who was also holding a pistol in his hand. The pistol was thereafter taken from him by the witness which was given to Sub-Inspector Kaushal Kumar (PW4). Kaushal Kumar also deposed that SI D. Mohanty (PW-3) handed over Sanjay's pistol to him which he handed over to SI Master Anand. Inspector Manmohan Jakhmola (PW1) deposed that he saw one Sub Inspector trying to seize the pistol from the hand of Sanjay and at that time the barrel of the pistol was aimed at the floor as he was restrained by the hand by a Sub Inspector. He further deposed that Sanjay was violent and aggressive at that point of time and immediately after seizing the pistol, its magazine was emptied and on his (Jhakhmola's) advice the pistol was deposited at Kote. He had also deposed that Sanjay had cocked the pistol.

15. In the cross-examination, the witness clearly stated that *"From the distance, it appears to me that Constable SK Dubey cocked the pistol immediately after taking it out from the holster"*. He also admitted that at that time he was at a distance of 25-30 yards. Although a feeble attempt was made by Sanjay to prove that Jakhmola could not have seen him cocking from distance of 25-30 yards yet from a totality of the evidence, together with the CCTV footage which this court considered during the hearing, it is apparent that in the scuffle, after being hit by Rajesh, the two petitioners were separated by S.C. Yadav (PW6). Sanjay was moved towards the table but he turned around holding his service revolver in his hand. S.C. Yadav immediately caught his hand and thus restrained him from using it.

16. The Sanjay's plea that he took out the service revolver for safety purposes since Rajesh was aggressive at that time and due to the punches given to him by Rajesh, he had lost his physical and mental balance is unconvincing and does not justify his act (of taking out pistol from holster). When he did this act he was already separated from Rajesh and moved away from him by S.C. Yadav. That he took out his revolver after being separated and drawn away from Rajesh showed his aggression. S.C. Yadav's statement as well as the CCTV footage show that the witness was behind petitioner at that time and D. Mohanty was positioned in such manner that he could not have seen him taking out pistol and cocking it. The Inquiry Officer, therefore, based his findings on the evidence on record; it clearly shows that Sanjay took out the pistol before it was taken away by other CISF employees. The adequacy of such evidence cannot be subjected to judicial review. It is not a case of no evidence. Since the authorities only had to apply the rule of "preponderance of probabilities" and not proof beyond reasonable doubt in departmental enquiry, the findings need no interference.

17. Rajesh (Petitioner in W.P.C.9219 /2014) denies the incident altogether. He alleged that the CCTV footage is forged and fabricated document, which was not proved on record, and that he had been falsely implicated. To prove the incident, the CISF relied on testimonies of S.C. Yadav (PW2), SI D. Mohanty (PW5) and the CCTV footage. These show that the petitioner entered the area, challenged Sanjay, had an altercation and when pushed by Sanjay, he gave him two punches. The statements of S.C. Yadav (PW-2) and S.I. D. Mohanty (PW-5) prove the incident. PW-2 had stated that he saw Rajesh Kumar hitting Sanjay and that he intervened.

He also referred to the CCTV footage in his cross examination in answer to the question about who were present at the time. S.I. D. Mohanty (PW5) deposed that while on duty at 'F' Company SHA department in the frisking area, at about 8:00 pm he heard noises. The area was near SHA 1/C department. When he went closer he saw that S.C. Yadav had caught hold of Sanjay, who held a pistol in his left hand. He also saw the CCTV footage which had recorded the entire incident. Rajesh Kumar did not cross-examine this witness.

18. The Court has considered the CCTV footage. The sequence of events have been recorded in the footage. This electronic evidence clearly shows that Rajesh entered through the door and confronted Sanjay Dubey. They had a verbal altercation which escalated into physical aggression. Rajesh, upon being pushed by Sanjay retaliated by beating him, punching him twice. S.C. Yadav (PW2) intervened and separated them.

19. The argument of learned counsel for the petitioner is that the CCTV footage cannot be relied upon since it was not proved in accordance with law. It is well known that rules of evidence are inapplicable to departmental enquiries. In those proceedings, materials on record, relevant to the fact in hand which are the basis of findings of enquiry officer. It was observed in ***State Of Haryana And Anr. vs Rattan Singh*** AIR 1977 SC 1512 that:

*“4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such*

*material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good XX XXX XXX The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and wordly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.*

20. It, therefore, is an established proposition of law that rule of evidence are not applicable to domestic enquiries. Even hearsay evidence is admissible; the materials should be credible and relevant. The material before enquiry officer in the case in hand, were in the form of statements of the witnesses and CCTV footage. Though CCTV footage was not proved under the Evidence Act, yet it was relevant material available to the Inquiry Officer. The findings of enquiry are thus based on evidence on record and cannot be brushed aside. It cannot be said that the enquiry report submitted

by the respective enquiry officers is based on conjectures and surmises or is perverse.

21. It was urged by Sanjay, that he and his wife were being harassed by Rajesh who was staying in his neighborhood and this was reported to the Assistant Commandant J.P.Goswami (PW2). He had made an oral complaint to the higher authorities against Rajesh prior to the incident. That this fact is acknowledged by AC Goswami (PW2) who has clearly stated in his cross examination that he was informed regarding the quarrel, that Sanjay had been suffering personally due to these quarrels and that Assistant Commandant J.P. Goswami(PW2) promised him to take up the matter with Rajesh's Company Commander and also bring the matter to the notice of the superiors, he was further advised to write an application regarding the same. Even Commandant of Domestic Terminal when he went for checking at about 1600 hrs. was duly informed about his harassment by Rajesh and his family. The Commandant further directed J.P. Goswami (PW-2) to inform Company Commander of 'D' Company about the problems faced by Sanjay and to ask Rajesh to meet him on the next day and also to assure Sanjay that his problem would be looked into. That the fight was picked up by Rajesh and that he himself was a victim of the circumstances. It is further urged that he had not taken out his pistol with intention to hurt anyone. It is submitted that since he was hit by Rajesh he had lost his physical and mental balance and as a precaution he took out the pistol and handed it over to S.C. Yadav(PW6) and the witnesses PW-6 and PW-3 clearly deposed that when they asked him to hand over the pistol, he complied with the directions and handed it over to them. It is further argued that before Sanjay could have sent a written complaint to the higher authorities regarding the harassment



meted out to him and his wife by Rajesh, Rajesh came and beat him when he was performing his duty. Inspector Manmohan Jakhmola(PW1) is the only witness stating that the cocking was done which he saw from a distance of 25 to 30 yards, which is highly improbable in this regard to see a person cocking a pistol keeping in mind the distance. He also did not cock his pistol but took it out and handed it over to senior officer to avoid any untoward incident. In view of this fact it seems highly disproportionate to remove him from service where he is trying to avoid any untoward incident from taking place.

22. On behalf of Rajesh, it is urged that nothing was preplanned and the tempers were lost during discussion. It is, however, urged by the respondent that both the petitioners had entered into a scuffle in a very highly sensitive area of Airport which has brought a bad name to the institution as the image went into public was that the institution instead of paying attention to its public duty was indulging into fighting with each other and the totality of circumstances show that the penalty imposed was not disproportionate.

23. The doctrine of proportionality while inflicting punishment has been discussed and considered in ***Charanjit Lamba v. Commanding Officer, Southern Command*** 2010 (11) SCC 314 wherein the Court has observed as under:-

*"15. the punishment imposed upon a delinquent should be commensurate to the nature and generally of the misconduct, is not only a requirement of fairness, objectivity, and non-discriminatory treatment which even though form quality of a misdemeanour are entitled to claim but the same is recognized as being a part of Article 14 of the Constitution. It is also evident*

*from the long line of decisions that the courts in India have recognized the doctrine of proportionality as one of the ground for judicial review. Having said that we need to remember that the quantum of punishment in disciplinary matters is something that rests primarily with the disciplinary authority. The jurisdiction of a Writ Court or the Administrative Tribunal for that matter is limited to finding out whether the punishment is so outrageously disproportionate as to be suggestive of lack of good faith."*

24. This principle has also been discussed in the case of **Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Assn. and Anr.**; (2007)4 SCC 669. It was observed as follows:

*"17. So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the "doctrine of proportionality".*

*18. "Proportionality" is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise--the elaboration of a rule of permissible priorities.*

19. *de Smith* states that "proportionality" involves "balancing test" and "necessity test". Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative. [Judicial Review of Administrative Action (1995), pp. 601-05, para 13.085; see also *Wade & Forsyth: Administrative Law* (2005), p. 366.] The Apex Court also considered the said principle in detail in the case of **Chairman cum Managing Director, Coal India Limited and Anr. Vs. Mukul Kumar Choudhuri and Ors.**; AIR2010SC75 laying down the principles for the applicability of such doctrine in administrative law in England as well as in India wherein the reliance was placed in the decision of **Union of India and Anr. v. G. Ganayutham** (1997) 7 SCC 463."

25. From the evidence discussed by us, it is apparent that Sanjay did make a complaint about the intimidation Rajesh and his family was causing to him and his family and the matter was within the knowledge of Commandant. Although Rajesh has denied this fact, the testimony of witnesses fortifying the Sanjay's claim that there was some dispute between him and his family and Rajesh and his family. This was apparently the reason and the root cause behind the brawl between the two. It is also apparent from the testimonies of witnesses and other facts and circumstances that there was no premeditation and preparation and everything had happened at the spur of the moment. None of them had received injuries in the brawl.

26. The Supreme Court in the case of **Vishwanath vs. Union of India and Ors.** 2008(1) ALLMR (SC) 471 wherein on a sudden provocation and insinuation, the control was lost and scuffle ensued between the Constables

of Railway Police Force, the Supreme Court had found the extreme penalty of removal disproportionate and harsh and converted it into a lesser punishment. The Supreme Court on considering the circumstances was of the view that the entire incident had happened predominantly because of sudden and grave provocation. Although the petitioner therein had belonged to the Force, the Court was of the opinion that the act of the petitioner could be termed as irresponsible behaviour for which extreme penalty was inconceivable.

27. The material on record in this case also shows that both the petitioners had entered into a spat due to some domestic issues between them. This is in fact admitted during the disciplinary proceedings by the evidence of a CISF witness. Sanjay and Rajesh's tension and their mutual antagonism boiled over when Sanjay came face to face with Rajesh. The sequence of the occurrence clearly suggests that the altercation was nearly spontaneous; first, the blow on Sanjay's face by Rajesh and the latter taking out his pistol. The weapon was not pointed at any time at Sanjay or anyone. The CCTV footage does not bear out the allegation that it was cocked by Sanjay. In the given circumstances, at most the petitioners' conduct should be considered as seriously irresponsible behaviour; but not so as to warrant their removal or dismissal.

28. Having regard to the totality of circumstances, the court hereby modifies and directs that the penalty of removal in Sanjay's case and dismissal of Rajesh, be substituted with one of penalty of withholding of three increments with cumulative effect. They shall also not be entitled to count the period out of employment for purposes of service benefits; it shall be treated as *dies non*. They are also disentitled to arrears of salary and other

emoluments. Appropriate effect shall be given to these directions and the Petitioners shall be reinstated within 8 weeks from today. Both writ petitions are allowed in these terms; there shall be no order as to costs.

**DEEPA SHARMA  
(JUDGE)**

**S. RAVINDRA BHAT  
(JUDGE)**

**MARCH 18, 2015  
BG**

